HALL, Circuit Judge, concurring in part and dissenting in part:

I concur with the majority's conclusion regarding the jurisdiction of the district court. In all other regards, I respectfully dissent.

I

With regard to Saez's pregnancy claim, the EEOC has not produced sufficient evidence that would allow a reasonable trier of fact to conclude that Saez performed her job satisfactorily. Saez's supervisor, Anna Reyes, specifically declared that "Saez refused to make photocopies, send facsimiles, deliver incoming packages that appeared heavy, [and] deliver outgoing packages to Federal Express Hub." This caused Reeves to ask Reyes why she was working overtime. Reyes told Reeves that Saez was not performing her duties. Saez was then fired by Reeves and she came out of his office and accused Reyes of getting her fired. Saez does not deny this confrontation, she just says it was not hostile. Saez does not deny that she was negligently performing her duties, she only states that "she never refused" to do them. The fact that others were willing to testify that they thought Saez was performing satisfactorily does not at all contradict Reyes' statements regarding specific incidents where Saez was not performing satisfactorily.

Saez's deposition testimony was equivocal. Saez repeatedly stated that she could not recall whether or not she had been criticized. Only after being pressed by her attorney did she specifically deny ever being criticized. Her later declaration in which she denies having been criticized by anyone is not enough to create a triable issue of fact. See Celotex Corporation v. Catrett, 477 U.S. 317 (1986) (a "mere scintilla of evidence" is not enough to create a triable issue of fact); Bradley v. Harcourt, Brace & Co., 104 F.3d 267, 270 (9th Cir. 1996) (defendant's subjective personal judgment of job performance is not enough to create issue of fact); Foster v. Arcata Assoc., Inc., 772 F.2d 1453, 1462 (9th Cir. 1985) (Appellant cannot "create his own issue of fact by an affidavit contradicting his prior deposition testimony".).

II

I respectfully disagree with the majority regarding the discrimination claim based on a hostile work environment. Dirty jokes regarding current events, one minor physical contact at the copy machine, hugging a co-worker at a party, "checking women out," asking a co-worker to square dance, and the use of profane language is not enough to create a workplace atmosphere so discriminatory and abusive that it altered the conditions of employment. Conduct must be extreme—offhand comments, isolated incidents (that are not extremely serious), and simple teasing do not create a sexually-harassive hostile work environment.

Faragher v. City of Boca Raton, 524 U.S. 775, 788-89 (1998).

I would affirm the district court in all respects including its award of attorney's fees.

I respectfully dissent.